

### REMARKS

Claims 1-8 and 12-20 are pending in this application. Claims 1-5, 12-20 are rejected under 35 USC 102(e) as being anticipated by Kumar patent 6,585,085. Claim 6 is rejected under 35 USC 103(a) as being unpatentable over Kumar in view of Effmert. Claim 7 is rejected under 35 USC 103(a) as being unpatentable over Kumar in view of Arens published application number 2002/0056592. Claim 8 is rejected under 35 USC 103(a) as being unpatentable over Kumar in view of Kostelny-Vogts.

Claims 5, 6, 8 and 12-6 are cancelled herein; leaving claims 1-4, 7, and 17-20 pending in this application after entry of this amendment.

Independent claim 1 and its dependent claims 2-4 have been amended herein to clarify that the position of the sensor (first position) is located farther along the rail in the direction of movement of the locomotive (down rail) relative to the position of the lubricant dispensing apparatus (second position). Kumar actually teaches away from these limitations by describing sensor 9 being located in an opposite direction (up rail) relative to the position of the lubricating apparatus 12. The up-rail sensors 9, 10 and related microprocessor are used in Kumar to provide the function of preventing the lubricant spray from being applied to a locomotive wheel. The apparatus described in the present specification and claimed in claims 1-4 needs no such complicated sensors and microprocessor, but rather exploits a physical distance (D) between a down-rail sensor and an up-rail lubricant dispensing apparatus to prevent the application of lubricant to the locomotive wheels. Kumar can not suggest the claim 1-4 limitation of placing the sensors 9, 10 up-rail from the lubricating apparatus 12 because such placement would destroy the functionality of the Kumar device, since Kumar relies on the wheels being sensed before they reach the location of the lubricant dispensing apparatus so that a determination can be made if the wheel is a locomotive wheel or a car wheel. Thus, claims 1-4 contain limitations not taught by the art, and the rejection of these claims under 35 USC 102(e) should be withdrawn.

Dependent claim 2 has been amended herein to clarify its further limitation of "a refilling device for adding lubricant to the lubricant container at no more than a predetermined rate so that lubricant available for application over a predetermined period of time is limited." This limitation is supported on page 8, lines 16-32 of the present

specification. The Examiner states that a refilling device is inherent in the apparatus of Kumar. However, a refilling device that specifically limits the lubricant available for application to the rail to a predetermined value over a predetermined period of time is not inherent. It may be inherent for a maintenance person to simply add lubricant to a wayside lubricant container whenever the container level gets low. However, the present claim 2 includes an additional refilling device that specifically adds lubricant to the container at no more than a predetermined rate, thereby providing additional protection against excessive lubrication. Accordingly, the rejection of claim 2 under 35 USC 102(e) is not supported by the art and should be withdrawn.

With regard to claim 4, the Examiner states that Kumar teaches a controller 38 terminating the application of the lubricant to the rail before a number of the load cars at a rear of the train pass the second position. However, column 5, line 38 through column 6, line 7 of Kumar, where the operation of controller box 38 is described, does not provide support for the Examiner's position. Kumar teaches that the operation of the spray nozzles may be controlled in a variety of ways with regard to the duration of the spray shot, the number of spray shots, the car speed, train length, degree of curvature of the track, and viscosity changes. However, Kumar does not teach or suggest the claim 4 limitation of "a controller terminating the application of the lubricant to the rail by the lubricant dispensing apparatus before a number of the load cars at a rear of the train pass the second position." If the Examiner finds this teaching in Kumar, the applicants would appreciate a citation to a specific page/line number. Believing that Kumar lacks any such teaching or suggestion, the applicants believe that the rejection of claims 4 is not supported by the art and should be withdrawn.

The Examiner has provided a general citation to Figs. 1-6 and the Abstract to support the rejection of independent method claim 17 and its dependent claim 18 as being anticipated by Kumar. However, claims 17 and 18 include the limitations of "applying lubricant in response to the presence of the second train at the location, with the quantity of lubricant applied at the second time being responsive to the time span between said first and second times." The applicants find no such teaching in Kumar. If the Examiner has found such steps in Kumar, the Examiner is requested to provide a citation to the appropriate portion of the Kumar specification. Believing that not to be the case, the

applicants submit that the rejection of claims 17 and 18 is not supported by the art and should be withdrawn.

Dependent claim 18 provides the further limitation of "applying no lubricant at the second time if the time span has not exceeded a predetermined minimum." The applicants find no such teaching in Kumar. If the Examiner has found such steps in Kumar, the Examiner is requested to provide a citation to the appropriate portion of the Kumar specification. Believing that not to be the case, the applicants submit that the rejection of claims 18 is not supported by the art and should be withdrawn.

Independent method claim 19 and its dependent claim 20 have been amended to include the limitations of "determining an end of train location relative to the section of rail; and terminating the application of lubricant at the section of rail before an end of the train passes the section of rail so that the quantity of lubricant on the section of rail is dissipated by wheels of a plurality of cars proximate the end of the train." The Examiner points to column 4, lines 35-48 of Kumar as describing this limitation, however, these lines of Kumar include no such teaching. If another portion of the Kumar specification provides describes such method steps, the Examiner is requested to provide the appropriate column and line reference. Believing that not to be the case, the applicants submit that the rejection of claims 19 and 20 is not supported by the art and should be withdrawn.

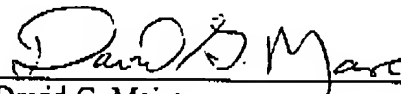
Dependent claim 20 adds the further limitation of "detecting the end of the train proximate a position of the rail a predetermined distance from a position of a lubricant applicator; and terminating application of the lubricant by the lubricant applicator in response to the detection of the end of the train." The Examiner provides a general citation to 1-6 and the Abstract to support this rejection; however, the applicants fail to find such a teaching in Kumar. If the Examiner has found such steps in Kumar, the Examiner is requested to provide a citation to the appropriate portion of the Kumar specification. Believing that not to be the case, the applicants submit that the rejection of claim 20 is not supported by the art and should be withdrawn.

Turning now to the rejection of claim 7 under 35 USC 103(a), the applicants note that claim 7 has been amended to include the limitations of "the bypass device comprises a wireless communication system receiver for receiving a signal from a wireless

communication system transmitter for controlling the bypass device." The Examiner points to paragraph [0010] of Arens as teaching such a device. However, that paragraph describes only the transmission of data from the wayside lubrication apparatus to a remote location. Claim 7 is directed to receiving a signal from a train, for controlling the bypass device. There is no teaching or suggestion in Arens of controlling the lubrication apparatus from any remote location - only of monitoring the apparatus from the remote location. Furthermore, Arens fails to describe sending such a signal from a train. Thus, the combination of Kumar and Arens fails to include all of the limitations of claim 7, and the rejection of claim 7 under 35 USC 103(a) should be withdrawn.

Entry of this amendment, reconsideration of the application, and allowance of claims 1-4, 7 and 17-20 are respectfully requested. The undersigned attorney would be happy to discuss this application with the Examiner should the Examiner feel that such a discussion would be helpful to advance the allowance of the application.

Respectfully submitted,



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